

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS**

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**UNITED STATES OF AMERICA,**

**Plaintiff,**

**v.**

**SUPERIOR CRUDE GATHERING, INC.,**

**Defendant.**

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**Civil Action No.**

**Judge**

**CONSENT DECREE**

Plaintiff, the United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), filed a Complaint against Defendant, Superior Crude Gathering, Inc., contemporaneously with the lodging of this Consent Decree. The Complaint seeks civil penalties against Defendant and alleges that Defendant is civilly liable for violation of Section 311(b)(3) of the Clean Water Act (“CWA” or “the Act”), 33 U.S.C. § 1321(b)(3), and for the failure to comply with regulations issued under Section 311(j) of the Act. The Complaint addresses Defendant’s unlawful discharge of harmful quantities of oil from Defendant’s storage tanks, located at the former Falcon Refinery in Ingleside, San Patricio County, Texas, into waters of the United States or adjoining shorelines and the failure to comply with spill prevention and planning regulations at the storage tank facility.

Defendant represents that it has (a) cleaned up the oil spill, (b) repaired or taken out of service the damaged storage tanks, (c) repaired the secondary containment areas, and (d) ceased its operations at the facility.

Defendant does not admit any fact or liability to the United States arising out of the occurrences alleged in the Complaint.

The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation between the Parties on the claims addressed in the Consent Decree, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, before taking testimony and without adjudication or admission of any issue of fact or law, or liability, except as provided above and in Section I, below, and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

**I. JURISDICTION AND VENUE**

1. This Court has jurisdiction over the subject matter of the United States' claim in this action pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 311(b)(7)(E) and (n) of the CWA, 33 U.S.C. § 1321(b)(7)(E) and (n). The Court has personal jurisdiction over the Parties to this Consent Decree.

2. Venue lies in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1395 because the claim arose in this district and Defendant is located and doing business in this district.

3. For purposes of this Decree, or any action to enforce this Decree, Defendant consents to the Court's jurisdiction over this Decree or such action and over Defendant, and consents to venue in this judicial district.

## **II. APPLICABILITY**

4. The obligations of this Consent Decree apply to and are binding upon the United States and upon Defendant and any successors, assigns, or other entities or persons otherwise bound by law.

5. No transfer of ownership or operation of the Facility shall relieve Defendant of its obligation to ensure that the requirements of the Consent Decree are implemented.

6. In any action to enforce this Consent Decree, Defendant shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

## **III. DEFINITIONS**

7. Terms used in this Consent Decree that are defined in the CWA, or in regulations promulgated thereunder, shall have the meanings assigned to them in the Act or such regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

- a. “Complaint” shall mean the complaint filed by the United States in this action.
- b. “Consent Decree” or “Decree” shall mean this document.
- c. “Day” shall mean a calendar day unless expressly stated to be a working day. In computing any period of time under this Consent Decree, the rules set forth in Rule 6(a) of the Federal Rules of Civil Procedure shall be followed.
- d. “Defendant” shall mean Superior Crude Gathering, Inc.
- e. “Discharge” shall mean the crude oil discharge commencing on February

9, 2010 from the Facility in Ingleside, Texas.

f. “Effective Date” shall have the definition provided in Section IX.

g. “EPA” shall mean the United States Environmental Protection Agency and any of its successor departments or agencies.

h. “Facility” shall mean Defendant’s oil storage facility at the former Falcon Refinery in Ingleside, San Patricio County, Texas.

i. “Paragraph” shall mean a portion of this Decree identified by an Arabic numeral.

j. “Parties” shall mean the United States, on behalf of EPA, and Defendant Superior Crude Gathering, Inc.

k. “Plaintiff” shall mean the United States, on behalf of EPA.

l. “Section” shall mean a portion of this Decree identified by a Roman numeral.

m. “United States” shall mean the United States of America.

#### **IV. CIVIL PENALTY**

8. Defendant shall not deduct or capitalize the civil penalty paid under this Section in calculating its federal income tax.

9. Within ninety (90) Days after the Effective Date of this Consent Decree, Defendant shall pay to the United States the sum of one million six hundred ten thousand dollars (\$1,610,000.00), plus interest, as a civil penalty. Interest shall accrue from the date on which this Decree is lodged with the Court, at the rate specified in 28 U.S.C. § 1961, as of the date of lodging.

10. Defendant shall pay the civil penalty due by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice in accordance with written instructions to be provided to Defendant, following lodging of the Consent Decree, by the Financial Litigation Unit of the U.S. Attorney’s Office for the Southern District of Texas. Such monies are to be deposited in the Oil Spill Liability Trust Fund. The payment shall reference the Civil Action Number assigned to this case and DOJ Number 90-5-1-1-10773 and shall specify that the payment is made toward CWA civil penalties to be deposited into the Oil Spill Liability Trust Fund pursuant to 33 U.S.C. § 1321(s) and 26 U.S.C. § 9509(b)(8).

11. At the time of payment, Defendant shall send a copy of the EFT authorization form and the EFT transaction record, together with a transmittal letter, which shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in this case, and shall reference the Civil Action Number assigned to this case and DOJ Number 90-5-1-1-10773, to the United States in accordance with Section VIII of this Decree (Notices) and to:

Stephen C. Ewart  
National Pollution Funds Center  
4200 Wilson Boulevard, Suite 1000  
Arlington, VA 22203-1804

Commander  
United States Coast Guard  
Office of Claims and Litigation CG-0945  
US Coast Guard Mailstop 7213  
2703 Martin Luther King Jr. Avenue SE  
Washington, DC 20593-7213

## **V. STIPULATED PENALTIES**

12. If Defendant fails to pay the civil penalty and interest required under Section IV

(Civil Penalty) when due, Defendant shall pay a stipulated penalty of twenty-five hundred dollars (\$2,500) per Day for each Day that payment is late. Late payment of a civil penalty and payment of any stipulated penalties shall be made in accordance with payment instructions in Section IV above. All transmittal correspondence shall state that any such payment is for late payment of the civil penalty due under this Consent Decree or for stipulated penalties for late payment of the civil penalty, as applicable. For all payments of stipulated penalties, Defendant shall reference the Civil Action Number assigned to this case and DOJ Number 90-5-1-1-10773 and shall specify that the payments are for stipulated penalties to be deposited into the United States Treasury.

13. Stipulated penalties under this Section shall begin to accrue on the Day after performance is due and shall continue to accrue until performance is satisfactorily completed. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

14. Defendant shall pay any stipulated penalty within thirty (30) Days of receiving a written demand.

15. The United States may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due under this Consent Decree.

16. Defendant shall not deduct stipulated penalties paid under this Section in calculating federal income tax.

17. If Defendant fails to pay stipulated penalties according to the terms of this Consent Decree, Defendant shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due. Nothing in this Paragraph shall be construed to limit the United States from seeking any remedy otherwise provided by law for

Defendant's failure to pay any stipulated penalties.

18. Subject to the provisions of Section VI of this Consent Decree (Effect of Settlement/Reservation of Rights), the stipulated penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States for Defendant's violation of this Consent Decree or applicable law.

**VI. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS**

19. This Consent Decree resolves the civil penalty claim of the United States for the violations alleged in the Complaint filed in this action.

20. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated in Paragraph 19.

21. The United States reserves all legal and equitable claims for, including but not limited to, injunctive relief, response and removal costs, expenses, damages including natural resource damages, criminal liability, and other appropriate relief, except as expressly stated in Paragraph 19. This Consent Decree shall not be construed to limit the rights of the United States to obtain additional relief under any federal law, implementing regulations of federal law, or permit conditions, except as expressly specified in this Consent Decree.

22. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, response or removal costs, expenses, damages including natural resource damages, criminal liability, or other appropriate relief relating to the Facility or Defendant's violations alleged in the Complaint, Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any

contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to the claims that have been specifically resolved pursuant to Paragraph 19 of this Section. Defendant reserves any and all defenses or claims not specifically addressed in this Section.

23. This Consent Decree is not a permit, or a modification of any permit, under any federal, state, or local laws or regulations. Defendant is responsible for achieving and maintaining complete compliance with all applicable federal, state, and local laws, regulations, orders, and permits. Defendant's compliance with this Consent Decree shall be no defense to any action commenced pursuant to said laws, regulations, orders, or permits, except as set forth herein. The United States does not, by its consent to the entry of this Decree, warrant or aver in any manner that Defendant's compliance with any aspect of this Consent Decree will result in compliance with provisions of the CWA or with any other provisions of federal, state, or local laws, regulations, orders, or permits.

24. This Consent Decree does not limit or affect the rights of Defendant or of the United States against any third parties that are not party to this Consent Decree, nor does it limit the rights of third parties that are not party to this Consent Decree against Defendant, except as otherwise provided by law, including but not limited to 33 U.S.C. § 1365(b)(1)(B) and 42 U.S.C. § 7604(b)(1)(B). This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

25. Defendant hereby covenants not to sue and agrees not to assert any claims related to the Discharge, or response activities in connection with the Discharge, against the United States pursuant to the CWA, OPA, or any other federal law or regulation for acts or omissions

through the date of lodging of the Consent Decree. Defendant further covenants not to sue and agrees not to assert any direct or indirect claim for reimbursement from the Oil Spill Liability Trust Fund or pursuant to any other provision of law.

## **VII. COSTS**

26. The Parties shall bear their own costs related to this Consent Decree for civil penalties, including attorneys' fees, except the United States shall be entitled to collect costs (including attorneys' fees) incurred in any action necessary to enforce this Consent Decree.

## **VIII. NOTICES**

27. Unless otherwise specified herein, whenever notifications, submissions, reports, or communications are required by this Consent Decree, they shall be made in writing and addressed to all parties as follows:

As to the United States:

To the U.S. Department of Justice:

Chief (re: DJ # 90-5-1-1-10773)  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, DC 20044-7611  
(202) 514-0097 (facsimile)

To EPA Region 6:

OPA Enforcement Coordinator  
U.S. Environmental Protection Agency, Region 6  
1445 Ross Avenue, Suite 1200, 6SF-PC  
Dallas, TX 75202-2733  
(214) 665-7447 (facsimile)

Amy Salinas  
Assistant Regional Counsel  
U.S. Environmental Protection Agency, Region 6  
1445 Ross Avenue, Suite 1200, 6RC-S  
Dallas, TX 75202-2733  
(214) 665-6460 (facsimile)  
salinas.amy@epa.gov

As to Defendant:

Jeff Kirby, President  
Superior Crude Gathering, Inc.  
P.O. Box 260784  
Corpus Christi, TX 78426  
(361) 882-4881 (facsimile)

28. Any Party may, by written notice to the other Party, change its designated notice recipient or notice address provided above.

29. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

**IX. EFFECTIVE DATE**

30. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket.

**X. RETENTION OF JURISDICTION/TERMINATION**

31. The Court shall retain jurisdiction over this case until termination of this Consent Decree for the purpose of effectuating or enforcing compliance with the terms of this Decree.

32. This Consent Decree will terminate automatically upon the payment by

Defendant of the Civil Penalty required in Section IV and any applicable stipulated penalties required in Section V for Defendant's failure to timely pay the Civil Penalty.

#### **XI. PUBLIC PARTICIPATION**

33. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) Days for public notice and comment. The Parties agree and acknowledge that final approval by the United States and entry of this Consent Decree is subject to notice of lodging of the Consent Decree and a public comment period. The United States reserves the right to withdraw or withhold consent if the comments disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate.

34. Defendant agrees not to oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified Defendant in writing that it no longer supports entry of the Decree. Defendant consents to entry of this Consent Decree without further notice except through the Court's electronic case filing system.

#### **XII. SIGNATORIES/SERVICE**

35. The Acting Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice, on behalf of the United States, and the undersigned representative of Defendant certify that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to the terms of this Decree.

36. This Consent Decree may be signed in counterparts, and such counterpart signature pages shall be given full force and effect.

37. Defendant agrees to accept service of process of the Complaint by mail and to

waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons. All other Court filings will be served through the Court's electronic case filing system.

### **XIII. INTEGRATION**

38. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. No other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

### **XIV. FINAL JUDGMENT**

39. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States and Defendant.

**This Consent Decree is dated and entered this \_\_\_\_ day of \_\_\_\_\_, 2014.**

\_\_\_\_\_  
**UNITED STATES DISTRICT JUDGE**  
**Southern District of Texas**

Signature Page to Consent Decree in *U.S. v. Superior Crude Gathering, Inc.*

**FOR PLAINTIFF UNITED STATES OF AMERICA:**

Dated: 10/23/14



SAM HIRSCH  
Acting Assistant Attorney General  
United States Department of Justice  
Environment and Natural Resources Division

Dated: 10/24/14



JASON T. BARBEAU  
Senior Attorney  
United States Department of Justice  
Environment and Natural Resources Division  
Environmental Enforcement Section  
P.O. Box 7611, Ben Franklin Station  
Washington, DC 20044

KENNETH MAGIDSON  
United States Attorney

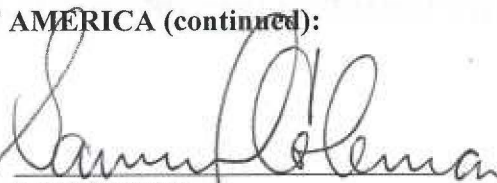
JOHN A. SMITH III  
Assistant United States Attorney  
Southern District of Texas  
Texas Bar No.18627450  
Federal ID No. 8638  
800 N. Shoreline  
Suite 500  
Corpus Christi, Texas 78401  
Tel: (361) 888-3111  
Fax: (361) 888-3200  
john.a.smith@usdoj.gov

Attorneys for the United States

Signature Page to Consent Decree in *U.S. v. Superior Crude Gathering, Inc.*

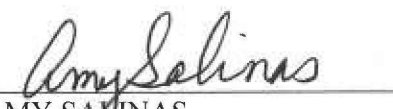
FOR PLAINTIFF UNITED STATES OF AMERICA (continued):

Dated: 10/2/14

  
for

RON CURRY  
Regional Administrator  
U.S. Environmental Protection Agency, Region 6  
1445 Ross Avenue  
Dallas, Texas 75202-2733

Dated: 9/30/14

  
AMY SALINAS  
Assistant Regional Counsel  
U.S. Environmental Protection Agency, Region 6  
1445 Ross Avenue, Suite 1200, 6RC-S  
Dallas, Texas 75202-2733

Signature Page to Consent Decree in *U.S. v. Superior Crude Gathering, Inc.*

**FOR PLAINTIFF UNITED STATES OF AMERICA (continued):**

Dated: 10/18/14



CYNTHIA GILES  
Assistant Administrator  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
Ariel Rios Building, 2201A  
1200 Pennsylvania Ave., N.W.  
Washington, DC 20460

Dated: 10/10/2014


MARK POLLINS  
Director  
Office of Civil Enforcement  
Water Enforcement Division  
U.S. Environmental Protection Agency  
Mail Code 2243A  
1200 Pennsylvania Ave., N.W.  
Washington, DC 20460

Dated: 10/7/2014



DAVID DRELICH  
Office of Civil Enforcement  
Water Enforcement Division  
U.S. Environmental Protection Agency  
Mail Code 2243A  
1200 Pennsylvania Ave., N.W.  
Washington, DC 20460

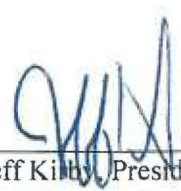
Signature Page to Consent Decree in *U.S. v. Superior Crude Gathering, Inc.*

**FOR DEFENDANT:**

**SUPERIOR CRUDE GATHERING, INC.**

Dated: 9/26/2014

By: \_\_\_\_\_

  
Jeff Kirby, President  
Superior Crude Gathering, Inc.